Supreme Court, U.S.
FILED
JAN 6 1995
OFFICE OF THE CLERK

(2)

No. 94-965

In the
Supreme Court of the United States
October Term, 1994

MAX WEISBERG,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

HUBERT H. HUMPHREY, III
Minnesota Attorney General
SUSAN GAERTNER
Ramsey County Attorney
MARK NATHAN LYSTIG
Counsel of Record
Assistant Ramsey County Attorney
50 West Kellogg Boulevard, Suite 315
St. Paul, Minnesota 55102
(612) 266-3083

Counsel for Respondent

1995 – Bachman Legal Printing ■ (612) 339-9518 ■ FAX (612) 337-8053

12

QUESTIONS PRESENTED

1. May a non-jurisdictional defect in a state court criminal complaint, raised for the first time more than a year after plea and sentencing, form the basis for relief by Writ of Habeas Corpus?

2. Was the Petitioner competent to proceed at the time of his guilty plea and sentencing on a criminal charge in state court?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED 5

Sufficiency of the Complaint 5

Competence to Proceed 6

CONCLUSION 8

TABLE OF AUTHORITIES

Statutes:

Minnesota Statute §609.75 Subd. 7 5

Minnesota Statute §609.76 Subd. 2 5

In the

Supreme Court of the United States

October Term, 1994

MAX WEISBERG,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION

Respondent State of Minnesota respectfully requests that the Petition for A Writ of Certiorari be denied. There are no special or important reasons which call for this court to grant review of the judgment below. This case involves no real dispute as to the requirements of the law, but only the application of well-established requirements to the specific, very unique factual circumstances of this case.

STATEMENT OF THE CASE

Petitioner Max Weisberg seeks review of the judgment of the Eighth Circuit Court of Appeals which reversed the Federal District Court grant of habeas corpus relief from a state court judgment and conviction based on his guilty plea to the state crime of Sports Bookmaking. The Federal District

Court decision was based on the same facts and law which had been presented to the state courts which had denied relief.

Max Weisberg was born in 1924 and is now about 70 years old. He was determined to be "feebleminded" by a state probate court in 1939. That determination forms part of the factual basis for Weisberg's current claim that he was incompetent at the time of his guilty plea in 1990. That claim ignores his lifetime of experience in the interim.

Max Weisberg was charged and convicted in 1973 in Federal District Court of two counts of Engaging in Illegal Gambling Business; was charged and convicted in state court in 1975 of Gambling; was convicted in 1977 in Federal Court of Transmission of Wagering; and, was convicted in 1980 in state court of Gambling. The state court trial judge who first ruled that Weisberg understood the nature and elements of the charges and found that Weisberg was competent to proceed was aware of this background.

The conviction which forms the basis for the current Petition comes from Petitioner's guilty plea in state court to the charge of Sports Bookmaking in 1989. At the time of the plea, and before sentencing, Petitioner was given the specific opportunity to raise any questions about his understanding of what he was doing or his competency to proceed. He chose to introduce no evidence and agreed that the state court trial judge could proceed with sentencing. Weisberg was convicted and sentenced. He was placed on probation.

He was charged with Sports Bookmaking in state court again. He had the same attorney, and chose not to plead guilty but to go to trial. He was found to have committed the acts constituting Sports Bookmaking but was found to be mentally deficient by a jury.

The state requested that his probation be revoked for engaging in bookmaking, in violation of the terms of his probation. The allegation was based on the same facts which the jury had found he had committed. Weisberg raised the

same issues which later formed the basis for his petition for habeas corpus relief: that the complaint was flawed and that he had not been competent to proceed. The state court trial judge (who was the same judge who had earlier accepted the guilty plea) was presented with all the evidence concerning Weisberg's competence to proceed, including the 1939 judgment that Weisberg was feebleminded.

The state court trial judge found that the complaint had been sufficient to inform Weisberg of the charges against him, that Weisberg was competent at the time he pleaded guilty, and that he was now competent. The state court trial judge found that the conditions of probation had been violated, and imposed additional sanctions, including some time in jail.

Weisberg appealed to the Minnesota Court of Appeals, which reversed the finding that the conditions of probation had been violated, but affirmed the trial court findings that the complaint had been sufficient and that Weisberg was and had been competent to proceed. The Minnesota Supreme Court denied review. Weisberg then sought habeas corpus relief in Federal District Court.

The Federal Magistrate Judge heard no additional or different evidence than had been presented on the issues in state court, but found that Weisberg had borne the burden of persuasion that Weisberg had not been competent at the time of his guilty plea, and also that the state complaint was deficient for not specifically stating on the face of the complaint that the activity was deemed to be "intentional". The Federal District Court Judge adopted the report and recommendation of the magistrate judge and granted the petition. The state appealed to the Eighth Circuit Court of Appeals, and the judgment of the District Court was reversed.

The Eighth Circuit Court of Appeals reversed the judgment of the district court and ordered that the petition for habeas corpus relief be denied on remand. The Court of Appeals held that Weisberg failed to prove that his plea was

invalid on the ground that he was incompetent, and also failed to prove that the conviction should be vacated on the ground that the complaint was insufficient, because any claimed deficiency was non-jurisdictional and thus was waived by his guilty plea.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

This case does not present any special or important reasons for this court to grant a Writ of Certiorari. The parties do not really dispute what the law requires as much as how the requirements of the law are to be applied to the very specific factual circumstances, and whether or not Weisberg's claims were of the sort that could be waived by him when he pleaded guilty. The decision of the Eighth Circuit Court of Appeals correctly identifies and applies the law and authority appropriate to this case. There is no special or important reason to disturb that judgment.

SUFFICIENCY OF THE COMPLAINT

Respondent State of Minnesota believes that the complaint was sufficient to inform Weisberg of the charges he must meet, and of all the essential elements of the offense. With the same attorney and the same charge, Weisberg was able to prevail at trial when charged in the next year.

Weisberg was charged with "Sports Bookmaking" under state law. Minnesota Statute §609.76 Subd. 2. Another statute defines "Sports Bookmaking" as "the activity of intentionally receiving, recording, or forwarding within any 30-day period more than five bets, or offers to bet, that total more than $2,500 on any one or more sporting events." Minn. Stat. §609.75 Subd. 7 (emphasis added). The element which Petitioner claims was lacking is contained by reference in the definition of the words describing the acts which he was charged with committing.

Weisberg also waived his right to raise the issue of the sufficiency of the complaint when he pleaded guilty. The state court of appeals held that since Weisberg waited until 17 months after his conviction and after he wa- charged with

violating the conditions of his probation, any complaint about the sufficiency of the complaint was untimely. Even if the challenge had been raised in a timely manner, the state court held that any defect did not cause a manifest injustice or prejudice.

The Eighth Circuit Court of Appeals found that the alleged deficiency in the complaint was non-jurisdictional and waived for purposes of habeas corpus relief by his guilty plea. The Eighth Circuit found that Weisberg had not proven a jurisdictional claim, and thus was not entitled to relief.

This case does not present any clear dispute as to the proper legal requirements, but only how well-established legal requirements are to be applied to this particular case. Since this case has a very complicated and not-likely-to-be-duplicated set of facts, it is a poor vehicle for a grant of a Writ of Certiorari.

COMPETENCE TO PROCEED

Petitioner Max Weisberg also claims that he should be granted habeas corpus relief since he claims that he was not competent and thus his plea was not voluntary and intelligent. This issue also does not involve a dispute between the parties as to the question of whether or not the law requires a criminal defendant to be competent, but really only a factual dispute between the parties as to whether or not this particular defendant was competent.

The state trail court judge who had the opportunity to personally observe the petitioner at the time of the plea and the sentencing found that the petitioner was competent. The state trial court judge specifically invited the petitioner's lawyer to bring out evidence to support a claim of incompetence, but he did not do so. The same trial court judge also had the opportunity to view the petitioner at the

time of the probation violation hearing, and again found that petitioner was competent to proceed.

The magistrate judge, who did not take any additional evidence, disagreed with the state court trial judge on the same facts and reached the conclusion that petitioner was not competent. The Eighth Circuit Court of Appeals panel disagreed with the magistrate judge's conclusion on the same facts and decided that the petitioner had been competent.

The parties agree that the case should not have proceeded had the petitioner been incompetent. The Respondent State of Minnesota believes that petitioner was competent; Petitioner now claims that he was not. Decisions of the courts below go both ways, and it is not important for this court to sort out the essentially factual question of whether or not the petitioner was competent at the time he pleaded guilty.

CONCLUSION

Respondent State of Minnesota respectfully requests that the Petition for A Writ of Certiorari be denied since the resolution of the case turns on essentially unique factual circumstances, and there are no conflicts in the law or federal questions which require resolution by this court.

Dated: January 6, 1995

Respectfully submitted,

HUBERT H. HUMPHREY, III.
Minnesota Attorney General

SUSAN GAERTNER
Ramsey County Attorney

By: MARK NATHAN LYSTIG
Counsel of Record
Asst. Ramsey County Attorney
50 W. Kellogg Blvd., Ste. 315
St. Paul, Minnesota 55102
Telephone: (612) 266-3083

Attorneys for Respondent